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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 246 of 1987
~~1986~~

DATE OF DECISION 01/07/1987

N. K. Dulera Petitioner

S. V. Parmar Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P Srinivasan : Administrative Member

The Hon'ble Mr. P. M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal. No

JUDGMENT

01/07/1987

OA/246/87

PER : HON'BLE MR P SRINIVASAN : ADMINISTRATIVE MEMBER

This application came up before us for admission today. Shri S V Parmar, learned counsel for the applicant and Shri P N Ajmera for Shri J D Ajmera, learned counsel for the respondents have both been heard. As we felt that the application could be disposed of at this stage itself after hearing counsel on both sides, we admitted the application and heard arguments in detail.

In this application the applicant wants memorandum dated 29/8/86 (Annexure-C) to be quashed and directions to be issued to the respondents to implement the judgment and decree passed by Civil Judge, Senior Division, Bhuj in Civil Suit No.363/79 delivered on 30/9/1985. The other prayers in the application were not pressed by Shri Parmar.

The applicant is working as Asstt. Central Intelligence Officer at Rajkot under the Intelligence Bureau, New Delhi. For the year 1977-78 certain adverse entries were made in his Confidential Report which he challenged in Civil Suit No.363/79. The learned Civil Judge after hearing both sides passed the following order :-

"The suit of the plaintiff is hereby allowed and decreed.

It is hereby ordered and declared that the adverse remarks made in Annual Confidential Report for the year 1977-78 of the plaintiff are held without application of the mind, against the principle of natural justice, arbitrary with a bias and without following the rules of the office Memorandum as well as inoperative and therefore are cancelled."

The defendants in the suit namely the Union of India & its Officers have filed an appeal against this order before the Gujarat High Court on 12/3/1986 and that appeal is pending. Meanwhile the applicant who was the plaintiff in the suit approached the Gujarat High Court for execution of the decree of the Civil Judge

[Signature]

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by SCA/5643/86. The learned Single Judge who heard the application observed that the jurisdiction of the High Court which had been invoked under article 226 of the Constitution of India had been taken away by Section 28 of the Administrative Tribunals Act, 1985 and had been vested in this Tribunal. On that ground the learned Judge declined to entertain the Special Civil Application and dismissed it at the stage of admission itself. This order was passed on 17/4/1987 by R A Mehta J of the Gujarat High Court. Thereafter the applicant filed the present application before this Tribunal on 7/5/1987 and that is how it has come before us.

A preliminary objection was raised by Shri P N Ajmera that since the appeal of the respondents against the decree of the High Court is pending with the Gujarat High Court, the present application which raises substantially the same issues cannot be entertained by this Tribunal.

Shri Parmar on behalf of the applicant, however, pointed out that the appeal filed by the respondents to the High Court against the order of the Civil Judge was incompetent and ab initio void because under section 29 A of the Administrative Tribunals Act, 1985 appeals from lower courts on service matters can be filed only before this Tribunal and not before the High Court. Section 29A was brought into the statute with effect from 22-1-1986, while the respondents filed their appeal before the High Court on 12/3/1986. He, therefore, pleaded that that appeal should be disregarded for the purpose of considering this application. Further, the subject matter of that appeal was different from that of this application. The learned Civil Judge had held that the adverse remarks made in the Confidential Report of the applicant for the year 1977-78 were inoperative and therefore the remarks were cancelled. The appeal filed by the respondents challenged the correctness of this decision. Till the order of the trial court is reversed by a competent Court of appeal it is operative and has to be given effect to. This is even more so since no stay of the judgment of the learned Civil Judge had been obtained either from him or from the High Court so far. What the applicant wants here is that the judgment of the

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learned Civil Judge be given effect to and the service record of the applicant recast in accordance with that judgment with "all consequential action" flowing therefrom. In other words it is not the correctness of the judgment of the Civil Court which is challenged here as in the respondents' appeal to the High Court but the applicant wants the respondents to take appropriate action in accordance with that judgment. Shri Parmar conceded if the judgment of the Civil Judge is reversed by a competent appellate authority, then and only then could the respondents not act in accordance with that judgment. In other words the applicant wants that the adverse remarks in Confidential Report for 1977-78 be deleted, which is his right as recognised by the learned Civil Judge and whatever benefits flow out of such deletion be given to him. This being so, the subject matter of this application was quite different from that of the appeal pending before the High Court of Gujarat. Shri Parmar made it clear that this argument was without prejudice to the first contention that the appeal filed by the respondents before the Gujarat High Court was itself incompetent and should be treated as non est.

After hearing advocates on both sides, we agree that the fact of the pendency of the appeal filed by the respondents before the Gujarat High Court does not preclude us from entertaining and disposing of this application. For this purpose we do not consider it necessary to go into the question whether the appeal filed by the respondents before the Gujarat High Court is competent. We have no doubt that when the appeal comes up before the Gujarat High Court that Court will examine the matter in the light of Section 29A of the Administrative Tribunals Act, 1985 and all other relevant questions of fact and law. ^{of} ~~which~~ We also agree that in the absence of any order by a competent Court of appeal, the judgment and decree of the learned Civil Judge in RCS/363/79 has to hold the field. The position therefore, is that by his judgment and decree dated 30/9/1985 the learned Civil Judge has declared that the adverse remarks in the Annual

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Confidential Report for 1977-78 in respect of the applicant are inoperative and stand cancelled. The result of this order would be that these adverse remarks should be disregarded and whatever consequences follow from treating them as inoperative should be available to the applicant. The applicant does not state in his application what further consequential action should follow and we also desist from enumerating such consequential action. It is for the applicant to represent to the authorities ~~specifying the~~ specifically further consequential actions to be taken as a result of the judgment of the Civil Judge and for the respondents to consider such representation and deal with it according to law. We, however, make it clear once again that whatever may be done on such representation would be subject to the decision of a competent appellate court, as and when delivered, in respect of the judgment of the learned civil judge. (X)

We have mentioned earlier that the first prayer in the application is that memorandum dated 29/8/86 at Annexure-C to the application should be quashed. That memorandum is a reply given to the applicant by the Asstt. Director Intelligence Bureau, New Delhi to a representation dated 4/8/86 addressed by the applicant against non implementation of the judgment of the Civil Judge. In the memorandum the Asstt. Director informed the applicant that an appeal had been filed in the Gujarat High Court against the judgment of the Civil Judge and that the orders of the High Court were awaited. The memorandum did not in terms reject any specific request of the applicant, but merely informed him of the appeal that had been filed and which was pending. Therefore since no decision on any point urged by the applicant was conveyed in that memorandum we see no point in quashing it. As we have indicated earlier, the applicant could now make a fresh representation stating specifically what consequential actions he wants the respondents to take as a consequence of the judgment of the Civil Judge and the respondents will deal with the representation unless of course in the meanwhile, any action in this regard is stayed by a competent Court.

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In the result we pass the following order ~~disposing of~~
this application:

The applicant may make representation to the respondents specifying such consequential actions as he would wish them to take as a result of the judgment of the Trial Court. In dealing with the representation of the applicant, the respondents will consider it on the footing that the adverse remarks in the applicant's Confidential Report for 1977-78 have been erased from the record. However, anything done in pursuance of this order will be subject to the outcome of the appeal of the respondents now pending with the High Court. (7)

Pf. 16/2/1987
(P SRINIVASAN)
ADMINISTRATIVE MEMBER

Jm/s
(P M JOSHI)
JUDICIAL MEMBER

Order made &
carried out as
per order of 13/1/86
in MA 190188
on
13/1/86

gbs/-